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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
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10/643,177

08/18/2003

Fred Diggle

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EXAMINER

STERLING, AMY JO

ART UNIT

PAPER NUMBER

3632

MAIL DATE

DELIVERY MODE

09/25/2007

PAPER

**Please find below and/or attached an Office communication concerning this application or proceeding.**

The time period for reply, if any, is set in the attached communication.

## Office Action Summary

**Application No.**

10/643,177

**Applicant(s)**

DIGGLE ET AL.

**Examiner**

Amy J. Sterling

**Art Unit**

3632

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

**Period for Reply**

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

**Status**

- 1) ☒ Responsive to communication(s) filed on 28 August 2007.
- 2a) ☐ This action is **FINAL**.                      2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

**Disposition of Claims**

- 4) ☒ Claim(s) 1-18 is/are pending in the application.
- 4a) Of the above claim(s) 1-6, 10-13 and 15 is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 7-9, 14 and 16-18 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

**Application Papers**

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☒ The drawing(s) filed on 18 August 2003 is/are: a) ☒ accepted or b) ☐ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

**Priority under 35 U.S.C. § 119**

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All    b) ☐ Some \*    c) ☐ None of:
- ☐ Certified copies of the priority documents have been received.
  - ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
  - ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

**Attachment(s)**

- |  |   |
|--|---|
| 1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892)            | 4) <input type="checkbox"/> Interview Summary (PTO-413)           |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948)   | Paper No(s)/Mail Date. _____                                      |
| 3) <input checked="" type="checkbox"/> Information Disclosure Statement(s) (PTO/SB/08) | 5) <input type="checkbox"/> Notice of Informal Patent Application |
| Paper No(s)/Mail Date <u>4/17/06</u> .   | 6) <input type="checkbox"/> Other: _____                          |

### **DETAILED ACTION**

This is the first Office Action for application number 11/643,177, Support Device, filed on 8/18/03. Claims 1-18 are pending.

#### ***Election/Restrictions***

Claims 1-6, 10-13 and 15 are withdrawn from further consideration pursuant to 37 CFR 1.142(b), as being drawn to a nonelected species, there being no allowable generic or linking claim. Applicant timely traversed the restriction (election) requirement in the reply filed on 8/28/07.

#### ***Information Disclosure Statement***

The information disclosure statement submitted on 4/17/06 is in compliance with the provisions of 37 CFR 1.97. Accordingly, the information disclosure statement has been considered by the examiner.

#### ***Double Patenting***

Claims 7-9 and 14 are rejected on the ground of nonstatutory double patenting over claims 1-4 of U. S. Patent No. 7077612 since the claims, if allowed, would improperly extend the "right to exclude" already granted in the patent.

The subject matter claimed in the instant application is fully disclosed in the patent and is covered by the patent since the patent and the application are claiming common subject matter, as follows:

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The claims both claim a shank with a first and second end and a hook and a circular opening that is coplanar with the hook

Furthermore, there is no apparent reason why applicant was prevented from presenting claims corresponding to those of the instant application during prosecution of the application which matured into a patent. See *In re Schneller*, 397 F.2d 350, 158 USPQ 210 (CCPA 1968). See also MPEP § 804.

### ***Claim Rejections - 35 USC § 102***

The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

(e) the invention was described in (1) an application for patent, published under section 122(b), by another filed in the United States before the invention by the applicant for patent or (2) a patent granted on an application for patent by another filed in the United States before the invention by the applicant for patent, except that an international application filed under the treaty defined in section 351(a) shall have the effects for purposes of this subsection of an application filed in the United States only if the international application designated the United States and was published under Article 21(2) of such treaty in the English language.

Claims 7-9 are rejected under 35 U.S.C. 102(e) as being anticipated by United States Patent No. 6484888 to Miller.

The patent to Miller discloses support device for supporting an article, the device having a shank (40, See Figure 30) having a first end and a second end, the first end adaptable to be driven into a member for securing the shank therein, a generally

hooked-shaped support member outwardly extending from the second end of the shank, the hook-shaped support member for supporting the article when attached to the hook-shaped support member; and a second support member (15) coplanar with the hook that extends outwardly extending from the second end of the shank, the second support member having an inner surface forming an enclosure about a hollow inner area, the second support member further supporting the article when attached to the second support member, wherein the second support member has a generally ring shape, and the inner surface has a generally circular shape enclosing the hollow inner area.

Claims 7 and 16-18 are rejected under 35 U.S.C. 102(b) as being anticipated by United States Patent No. 3092412 to Drake.

The patent to Drake discloses a support device (10) for supporting an article, the device having a shank (11, 25) having a first end and a second end, the first end adaptable to be driven into a member for securing the shank therein, a generally hooked-shaped support member (19) outwardly extending from the second end of the shank, the hook-shaped support member for supporting the article when attached to the hook-shaped support member; and a second support member (26) that extends outwardly extending from the second end of the shank, the second support member having an inner surface forming an enclosure about a hollow inner area, the second support member further supporting the article when attached to the second support member, wherein the second support member has a generally ring shape, and the inner

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surface has a generally circular shape enclosing the hollow inner area wherein the shank comprises an interior passage extending from the first end to the second end, the interior passage having an inner wall defining a longitudinal axis extending from the first end to the second end, the interior passage open at the first end and open at the second end such that a fastener may be inserted into and through the interior passage wherein the inner wall of the interior passage is threaded (at 24), wherein the shank comprises at least one finger (21) extending from the first end of the shank, the at least one finger deflecting into contact with the member as the fastener is inserted into the interior passage.

Claims 7 and 14 are rejected under 35 U.S.C. 102(b) as being anticipated by United States Patent No. 3515363 to Fisher.

The patent to Fisher discloses a support device for supporting an article, the device comprising a shank (26) having a first end and a second end, the first end adaptable to be driven into a member for securing the shank therein; a generally hooked-shaped support member (32) outwardly extending from the second end of the shank, the hook-shaped support member for supporting the article when attached to the hook-shaped support member; and a second support member (14) outwardly extending from the second end of the shank, the second support member having an inner surface forming an enclosure about a hollow inner area (16), the second support member further supporting the article when attached to the second support member wherein the

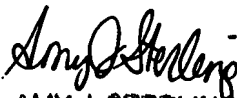
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first end of the shank comprises at least one barb protruding from an outer surface, the at least one barb for securing the shank into the member (22).

***Conclusion***

Any inquiry concerning this communication should be directed to Amy J. Sterling at telephone number 571-272-6823. The examiner can normally be reached (Mon-Fri 8am-5:00pm). The fax machine number for the Technology center is 571-273-8300 (formal amendments), informal amendments or communications 571-273-6823. Any inquiry of a general nature or relating to the status of this application should be directed to the Technology Center receptionist at 571-272-3600.

Amy J. Sterling  
9/18/07

  
AMY J. STERLING  
PRIMARY EXAMINER  
TECHNOLOGY CENTER 3600